



44 Montgomery Street
Suite 400
San Francisco, CA
94104-4606

415.989.5900
415.989.0932 Fax
www.cbmlaw.com

July 15, 2014

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA E-MAIL AND U.S. MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113
E-Mail: alex.gurza@sanjoseca.gov

Re: Retirement Board Governance
File No.: 040507

Dear Alex:

Thank you for your letter of July 11, 2014. Separately, we are working to provide you with dates upon which to convene the Step III grievance meeting between City Labor Relations and the POA. We hope to convene this week.

In the meantime—and without further confusing the issues—I would like to elaborate on the grievance given that the City appears not to fully comprehend it.

The City wants to make a change relating to the governance of the Retirement Board. In particular, the City plans to ask the voters to put two new provisions in the City Charter. One would expressly give the City Council *charter authority* to create one or more retirement boards. The second would mandate that the City Council select and appoint the majority of the nine-person Police and Fire Retirement Board.

The POA has cited legal authority supporting the proposition that changes in the composition of a public agency retirement board are within the scope of bargaining. We also explained that previously the City has so agreed, and has in fact bargained about at least one prior proposal to change the composition of the Board(s).

In response, the City appears to be taking the position that the changes do not in and of themselves constitute a change in the composition of the Board and are not therefore within the scope of bargaining. But even the City would have to concede

Alex Gurza
Re: Retirement Board Governance
July 15, 2014
Page 2

that these changes effect the procedures through which changes in the composition of the Board would be achieved.

As Chris Platten pointedly asked you: *when, if at all, does the City concede it has a bargaining obligation with respect to changing the composition of the Boards?*

The City also takes the position that there is change here because the proposed language mirrors what is currently in the Municipal Code and therefore there is no change. Putting aside our disagreement with the assertion that the language is the same, the change from being in the Municipal Code to being in the Charter is a substantive one. When a provision is in the San Jose Municipal Code, it is subject to being overridden by a duly ratified collective bargaining agreement. Conversely, I am certain that the City would take the position that the same would not hold true with a provision of the City Charter. And while the law in this area is not fully settled, there seems little doubt that the City would take the position that what appears in the Charter cannot be superseded by a collective bargaining agreement.

In sum, the City's proposal appears to be designed to make the composition of the Retirement Board, and perhaps also its existence as an independent body solely responsible for the Police and Fire Retirement Plan, no longer a subject for bargaining.

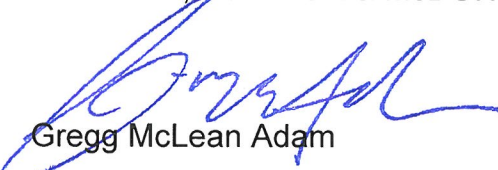
I reiterate the POA's non-opposition to the other parts of the June 20th draft ballot proposal. Unfortunately, the POA cannot affirmatively support the changes because the City's proposed ballot language falls far short of the recommendations of Cortex, and specifically puts in the Charter a set of powers that are watered-down from Cortex's recommendation. This will require yet another change to the Charter to fix. It is not clear why the City is moving with such urgency to implement a half-baked governance model.

The POA recommends that the City redraft the ballot measure, withdraw proposed sections 810(a) and (b), and propose an independent governance model consistent with Cortex's recommendations.

We will be happy to expand on any of these points when we hold our grievance conference.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

Alex Gurza
Re: Retirement Board Governance
July 15, 2014
Page 3

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cc: Ed Shikada, City Manager
Richard Doyle, City Attorney
Sean Kaldor, Chair, San Jose Police and Fire Retirement Plan Board
Police and Fire Retirement Board c/o Sean Kaldor
Harvey L. Leiderman, Esq., Reed Smith LLP
Jennifer Schembri, Deputy Director Employee Relations
Jim Unland, President, San Jose POA
Christopher E. Platten Esq., Wylie, McBride, Platten & Renner